

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

BRANDON LESTER

§

§

vs.

§

CIVIL ACTION NO.

§

7:15-CV-665

SMC TRANSPORT, LLC AND ISRAEL

§

MARTINEZ, JR. AND SALINAS

§

EXPRESS, LLC

§

§

ORAL AND VIDEOTAPED DEPOSITION  
SERGIO CUELLAR  
April 20, 2016

ORAL AND VIDEOTAPED DEPOSITION OF SERGIO CUELLAR, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on April 20, 2016, from 9:23 a.m. to 11:24 A.m., before Annette E. Escobar, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of La Posada Hotel, La Posada Hotel, 1000 Zaragoza Street Laredo, The Blue Bonnet Conference Room, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.



1 P-R-O-C-E-E-D-I-N-G-S

2 Whereupon,

3 9:23 a.m.

4 THE VIDEOGRAPHER: We are on the record.

5 Today's date is April 20th of the year 2016. The time is  
6 approximately 9:17 in the morning, and you may proceed  
7 with the deposition, please.

8 SERGIO CUELLAR,

9 having been first duly sworn, testified as follows:

10 EXAMINATION

11 BY MS. WHITE:

12 Q Mr. Cuellar, my name is Johneal White and I  
13 represent a young man named Brandon Lester who was injured  
14 in the accident in Virginia on October 26th, 2015.

15 And do you understand -- well, can you say  
16 your full name for the record?

17 A Sergio Cuellar.

18 Q And are you one of the principals of SMC  
19 Transport LLC?

20 A Yes.

21 Q And do you understand that SMC Transport LLC is  
22 a defendant in this lawsuit that we're here about today?

23 A Yes.

24 Q And do you understand that this deposition today  
25 has been noticed under provision of the rules that allows

1 Q The daughter?

2 A The Door.

3 Q The Door?

4 A D-O-O-R, The Door Christian Fellowship.

5 Q And are there any vehicles titled in the name of  
6 SMC Transport LLC?

7 A Yes, two vehicles.

8 Q And what vehicles are those?

9 A One is my father's, Servando Cuellar Sr., and  
10 the other one is SMC that it's, that 2003 Freightliner.

11 Q The one that was involved in this accident?

12 A Yes.

13 Q What year and model is your father's vehicle?

14 A It's a 1997.

15 Q Freightliner Peterbilt?

16 A Yes, Freightliner.

17 Q And do you have -- do both of those vehicles  
18 bear the name SMC on the side of them?

19 A Yes.

20 Q SMC Transport LLC?

21 A Yes.

22 Q And do both of those vehicles bear the SMC DOT  
23 number?

24 A Yes.

25 Q Are there any other vehicles that currently bear

1 the, that say SMC Transport LLC and bear the SMC DOT  
2 number on the side of them?

3 A Yes.

4 Q What vehicles are those?

5 A It's, like, seven other vehicles.

6 Q And those are not ones that you own or that SMC  
7 owns?

8 A No.

9 Q Who owns those seven other vehicles?

10 A Two of them they're owned by me, by Sergio  
11 Cuellar.

12 Q Personally?

13 A Yes.

14 Q And the others?

15 A I have one is Maria Guzman, the other one is  
16 Roland -- I don't recall his last name. There's two  
17 vehicles under, his name is Israel Pruneda, Israel  
18 Pruneda, and there's two from -- I can't remember the  
19 name. I don't remember their name right now off of my  
20 head.

21 Q And let me go back a little bit. Who owns SMC  
22 Transport LLC?

23 A I do.

24 Q Just you?

25 A Yes.

1 Q Does SMC Transport LLC have any employees?

2 A Employees, as what kind of employees?

3 Q Any employees?

4 A Well, they're owner operators of their vehicles,  
5 they're employed by SMC. I mean, I do have one, Hector  
6 Quintanilla he's a safety.

7 Q How long has Hector been working for you?

8 A I'm going to say about a month, maybe two  
9 months.

10 Q Was there someone previously in that position  
11 before Hector?

12 A I had Keesha Guerrero, she would do billing.

13 Q How long did she work for you?

14 A Three years.

15 Q When did she stop?

16 A In December of 2015.

17 Q Why did she stop working for you?

18 A She got a better position offered in Dallas,  
19 Texas. They would pay for her school.

20 MS. WHITE: Let's go off the record.

21 THE VIDEOGRAPHER: The time is 9:27 in the  
22 morning, and we are off the record.

23 THE VIDEOGRAPHER: The time is 9:31 in the  
24 morning and we are back on the record. You may continue  
25 with the deposition, please.

1 Q And did you ever add it to any SMC insurance  
2 policy?

3 A Did I ever add it?

4 Q Yeah.

5 A Yes. I mean, yes, it has insurance.

6 Q When did you add it?

7 A I don't have the specific date.

8 Q Was it before this accident or after this  
9 accident?

10 A I'm not sure on that.

11 Q How do you -- when you need to add or subtract a  
12 vehicle from your insurance policy, how do you go about  
13 doing that?

14 A An e-mail, shoot -- I send an e-mail stating to  
15 add a vehicle or to remove a vehicle.

16 Q To Greg or Brittany?

17 A Yes.

18 Q Have you checked your e-mails to see if you sent  
19 any e-mail concerning the vehicle in this case?

20 A No, I have not checked.

21 Q Do you have the ability to do that?

22 A I think I do.

23 Q In October 2015, did Roy Salinas or did someone  
24 ask to borrow the vehicle involved in this accident?

25 A Yes, Roy Salinas asked me to borrow it.

1 Q Do you know what date he asked you to borrow it?

2 A I don't remember.

3 Q What did he tell you when he asked to borrow it?

4 A He said if he could use my tractor to go pick up  
5 his tractor.

6 Q Did he specify which tractor?

7 A He says his was broke down, and that's all I  
8 know.

9 Q Did he specify which have tractor he wanted to  
10 borrow?

11 A No, he just asked to borrow a tractor.

12 Q And so did you -- did you tell him he could  
13 borrow a tractor?

14 A Yes, I told him he could.

15 Q Did you suggest to him which tractor to borrow?

16 A The only tractor that was parked was the 2003  
17 that had been parked.

18 Q So was -- did you tell him you can borrow the  
19 parked 2003?

20 A Yes.

21 Q Did he know that it had, it was the one that had  
22 the wench attached to it at the time?

23 A Yes.

24 Q How did he know that?

25 A Because he wanted to borrow the tractor with the

1 hitch to pick up his.

2 Q Yeah. Did he know which vehicle the wench was  
3 attached to at the time?

4 A No, he didn't which one was.

5 Q So he just wanted to borrow the vehicle with the  
6 wench?

7 A Correct.

8 Q And you said it's attached to the one involved  
9 in this accident, you can borrow that one?

10 A Yes.

11 Q Did you talk to him at all about any mechanical  
12 difficulties it had been having?

13 A No.

14 Q Did you talk to Rudy Salinas at all about Roy  
15 borrowing that truck?

16 A I don't remember.

17 Q You may have?

18 A Maybe.

19 Q So did you meet Roy somewhere to give him the  
20 keys to that, to the truck involved in that accident?

21 A Actually, I on that I helped Roy Salinas because  
22 they couldn't hook up to another truck they were taking up  
23 there to pick up their trailer, I don't know where. But  
24 he told me, can you help me hook on. They couldn't hook  
25 on so I helped out because I was the owner.



1 Q Was it a Salinas Express vehicle?

2 A Yes.

3 Q And did you assist them with doing to that?

4 A Yes.

5 Q Do you know what day that happened on?

6 A No, I don't.

7 Q Did -- how long in between the phone call when  
8 Roy says can you come help us and when he first picked up  
9 the SMC truck?

10 A For how long?

11 Q Yeah. How long had he had it?

12 MR. DUNN: I'm going to object to the form  
13 of the question. I'm not sure what you're asking.

14 Q (By Ms. White) How long had he had the truck in  
15 his possession before he called you?

16 A I don't know. I remember him calling me to go  
17 help him hook on and I met him, like, I'm going to say  
18 within an hour.

19 Q All right. So had he -- but he had picked up  
20 the truck the same day, the SMC truck?

21 A If -- that same day or the day before. I'm not  
22 sure.

23 Q And you gave him the keys to it?

24 A They were on. I always leave my keys on.

25 Q You leave them in the truck?

1 A Yes.

2 Q But you knew that he was taking the truck?

3 A Correct.

4 Q And you were okay with that?

5 A Yes.

6 Q Did you give him any restrictions on who could  
7 drive the truck?

8 A I know that I loaned the truck to Roy Salinas.

9 Q But you didn't -- you didn't tell him that no  
10 one else could drive it?

11 A I didn't know somebody else was going with him.

12 Q Yeah.

13 A I gave Roy Salinas.

14 Q But you saw at least one other Salinas driver  
15 there?

16 A Yeah, but there was other vehicles there.

17 Q I understand. But I just want to be clear. You  
18 didn't tell Roy that no one else could drive it?

19 A No, I didn't.

20 Q Did you give him any other instructions about  
21 the use of the vehicle?

22 A No.

23 Q Do you know where they were headed when they  
24 left the truck stop?

25 A To pick up Roy's truck, that's all I know.

1 Q Was it dark when they left?

2 A No.

3 Q Still daytime?

4 A 8:00 a.m. or 10:00 a.m. I don't know. I'm not  
5 sure.

6 Q Did they tell you they were headed to Houston  
7 first?

8 A They didn't tell me nothing. Just said -- don't  
9 know.

10 Q Did you know where Roy's truck was?

11 A No.

12 Q Did you know that it had broken down in  
13 Virginia?

14 A No.

15 Q Did you know how long to expect that your  
16 vehicle would be gone?

17 A No.

18 Q When was the next time you heard from Roy?

19 A If I'm correct, it was the day of the accident.

20 Q And did he call you from Virginia?

21 A He just called me, hey, we were in an accident,  
22 and that's all he told me. He was trying to explain to me  
23 what happened. He said that they were parked and that a  
24 vehicle hit them.

25 Q Did he tell you who was driving?

1           A     No, he didn't.

2           Q     And that was the -- that was how he described  
3     the accident that the vehicle was parked and some one hit  
4     the vehicle?

5           A     Yes.

6           Q     Did he say anything else about how the accident  
7     happened?

8           A     No. He just said they were hooking on and that  
9     they were parked when they were hooking on to his tractor  
10    and somebody hit him.

11          Q     Do you know if he was calling you from the  
12    accident scene?

13          A     I, I assume. I mean, where else would he be  
14    calling me from.

15          Q     And did he tell you where he was calling you  
16    from?

17          A     No.

18          Q     Did you hear anything in the background that  
19    indicated to you that he might be in an accident scene?

20          A     No.

21          Q     Did you talk to anyone else at that time who,  
22    like, on Roy's phone?

23          A     I don't remember.

24          Q     Did Roy tell you that he had been carrying a  
25    load when his truck broke down?

1 A Yes.

2 Q So ultimately part of this trip up to Virginia  
3 with your truck was to, the point of it was to allow the  
4 Salinas Express load to be delivered?

5 A Correct.

6 Q And also, the point was to allow Roy's broken  
7 down Salinas Express truck to complete the last leg of its  
8 journey to Texas?

9 A Correct.

10 Q Did you ever have any conversation with Rudy  
11 about the accident?

12 A No.

13 Q Did you ever have any conversation with Roy on  
14 his way up to Virginia?

15 A No.

16 Q Did you have any conversation with him on his  
17 way back from Virginia?

18 A On his way back I called him to see where they  
19 were at, I mean, how was the truck.

20 Q What did he say?

21 A That he was -- it was fine, was he was driving.

22 Q Do you know when they got back to Texas?

23 A I don't have the -- I don't know.

24 Q Do you know who drove the SMC truck back to  
25 Texas?

1           A     I know Roy turned it into me.

2           Q     Did it have damage on it at the time?

3           A     The bumper and the headlight on the drive's  
4 side.

5           Q     And was it fully across the bumper or just more  
6 on one side?

7           A     It was more on the driver's side, but, yes, it  
8 was, the bumper was, I guess, bent.

9           Q     And was the vehicle repaired?

10          A     It was just -- I just replaced the bumper,  
11 that's all I did, and that's all I had to do to it replace  
12 the bumper.

13          Q     So you made the repairs to the vehicle?

14          A     Yes.

15          Q     When was the vehicle repaired?

16          A     The day they brought it to me I just took off  
17 the bumper with four screws and put a new one with four  
18 screws.

19          Q     So you already had a bumper?

20          A     Yes.

21          Q     Where did you get it?

22          A     We have other trucks that are similar.

23          Q     So did any -- anyone reimburse you for the  
24 repairs?

25          A     There was no repair. It was just bumper that I

1 Q And did -- did it have any predecessor  
2 companies? Were you a part of any companies before that?

3 A No.

4 Q What did you do before that?

5 A I used to be a driver.

6 Q Did you ever drive for Salinas Express?

7 A No.

8 MR. DUNN: Are you going to go much longer  
9 the reason why is time sake break, maybe?

10 MS. WHITE: Yeah, now would be a good time.

11 THE VIDEOGRAPHER: The time is 10:41 in the  
12 morning, and we are off the record.

13 THE VIDEOGRAPHER: The time is 10:48 in the  
14 morning, and we are back on the record. You may continue  
15 with the deposition, please.

16 Q (By Ms. White) I just want to clarify. Roy  
17 initially picked up, picked up the SMC truck involved in  
18 this accident at your yard in Weslaco?

19 A Yes.

20 Q And you met him there?

21 A Not at my yard; at the truck stop.

22 Q Oh. So you just told him to go pick it up at  
23 your yard and you weren't present when he picked it up?

24 A Correct.

25 Q And the keys were already in it?

1 A Yes.

2 Q Do you receive any payment for the use of your  
3 truck on this trip?

4 A No.

5 Q Did you receive any in-kind benefit from anyone  
6 for use of your truck for this trip?

7 A No.

8 Q Did Roy call to check in with you at all during  
9 this trip up to or back from Virginia?

10 MR. DUNN: Objection, asked and answered,  
11 but go ahead answer best you can.

12 Q Well, I think you described he called you after  
13 the accident?

14 A Correct.

15 Q Twice?

16 A Once.

17 Q Once?

18 A (Nods head.)

19 Q But did he -- he didn't call you at all on the  
20 way up?

21 A No.

22 Q At the truck stop in Weslaco when you went to go  
23 help, hook up the two tractors, what physically did you  
24 have to do?

25 A I was just showing them how to do it. I just



1     showed them put the chain through here through the side  
2     hold tires up and hook it up to the frame.

3           Q     So you have to attach a frame to the truck being  
4     hauled?

5           A     Correct.

6           Q     And did you physically how to do that?

7           A     I showed him how to do it. I didn't do it. Roy  
8     was doing it.

9           Q     Roy did, it but you were directing him?

10          A     Correct.

11          Q     And then, and then did you physically operate  
12     the wench or did Roy?

13          A     No, Roy did.

14          Q     But you directed him how to do it?

15          A     Correct.

16          Q     So did you physically have to do anything?

17          A     No.

18                   MS. WHITE: I just want to mark these as  
19     the next exhibit. It's the black and white photos of  
20     damage of the SMC tractor.

21                   MR. HEARN: Are you marking those  
22     collectively?

23                   MS. WHITE: Yes.

24                   MR. HEARN: What would be the next exhibit  
25     number?

1 A Correct.

2 Q Did you know at that time why they were putting  
3 the Salinas tractor on the SMC tractor?

4 A Yes.

5 Q And what was the reason?

6 A To pick up his trailer.

7 Q Okay. And the reason they were hooking it on  
8 rather than drive separately was for what purpose?

9 A To save on the fuel.

10 Q All right. And you showed Roy how to hook them  
11 up on the wench?

12 A Correct.

13 Q Did you hook it up so that the front of the  
14 Salinas tractor was hooked to the back of the SMC so  
15 they're both facing in the same direction, or did you hook  
16 it so that the rear of the Salinas tractor was lifted up  
17 and the tractors are facing in opposite directions?

18 A They were facing the opposite direction.

19 Q Okay. And that's the way you haul -- that's the  
20 way the SMC truck was configured when it left the fuel  
21 stop to head off wherever it was going?

22 A Correct.

23 Q And it wasn't until after the accident that you  
24 found out that they came to Virginia?

25 A Yes.

1 Q Okay. So when you agreed to lend Roy the truck  
2 you didn't know any purpose of the load, or of him  
3 borrowing it other than to pick up his tractor?

4 A Correct.

5 Q And you said SMC owns two trucks, one it's owned  
6 by your father?

7 A Correct.

8 Q But it's titled in the name of SMC?

9 A Correct.

10 Q And one is owned by you and it's titled this  
11 one, the 2003 Freightliner, and that's titled, it's owned  
12 by you but titled with SMC?

13 A Correct.

14 Q And then the other seven or eight vehicles are  
15 all owned by --

16 A Individuals.

17 Q -- individuals that are leased to SMC?

18 A Correct.

19 Q And what was the total purchase price of this  
20 vehicle from Rick Morales?

21 A 10,000.

22 Q Okay. And you gave him 3,000 down and then you  
23 made payments until you made the other 7,000?

24 A Correct.

25 Q And if I understand you registered it in August

1 of 2015?

2 A Correct.

3 Q And at that point in time was it inspected?

4 Does it have to pass a state inspection?

5 A No.

6 Q Okay. So there's no requirement that your  
7 vehicle is inspected and that it operates properly when  
8 you register your vehicle here in Texas?

9 A Yes, it was inspected. If I'm correct, it does  
10 have an inspection, it did have an inspection. The  
11 inspection is to make sure your lights work, your brakes  
12 work, your -- and tell you you have good tires, that's  
13 what they check.

14 Q Based on the turbo and the turbo sensors you  
15 weren't able to pull a heavy, a full load?

16 A Correct.

17 MR. DUNN: I'm going to object to the  
18 question. What time are you talking about?

19 Q (By Mr. Frankl) When you purchased the vehicle  
20 and after you made even initial repairs on the turbo and  
21 the turbo sensor was it still having problems pulling a  
22 full 80,000-pound load?

23 A Yes.

24 Q Did there come a point in time when that problem  
25 was corrected?